

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR. JUSTICE N.V. RAMANA

WRIT PETITION NO : 1118 of 1996

Between:

Battula Dharma Raju, S/o Peda Apparao
R/o. Mallepalli Village, Gandepalli Mandal,
East Godavari District.

..... PETITIONER

AND

1. The District Collector, East Godavari District, Kakinada .
2. The Revenue Divisional Officer, Peddapuram, East Godavari District.
3. The Mandal Revenue Officer, Gandepalli Mandal, East Godavari District.
4. The Executive Officer, Sri Panuganti Laxmi Venkayamma Vari

Dharmasatram, Katravulapalli, Jaggampet Mandal, East Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ or Order or Direction: (i) declaring the action of the respondent authorities in notifying the land in Sy.No.315/2 admeasuring Ac.1.42 cents vide reference no. dt: 11.12.1995 as arbitrary, illegal and violative of the Articles 14, 21 and 300-A of the Constitution of India, (ii) quash the notification under Section 4(1) of the Land Acquisition Act of the respondent authorities in Ref.No.L1/10201/95 dt.11.12.1995.

For the Petitioner: MR. A. SUDERSHAN REDDY, Advocate

For the Respondent Nos.1 to 3: GP FOR LAND ACQUISITION

For the Respondent No.4: Mr. A. Krishna Murthy, Advocate

The Court made the following :

ORDER:

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The petitioner, by this writ petition, seeks to declare the action of the respondents in notifying land of the fourth respondent-Dharmasatram to an extent of Ac.1-42 cents in Survey No.315/2 (the land in question), vide the reference, dated 11-12-1995, as arbitrary, illegal and violative of Articles 14, 21 and 300-A of the Constitution of India, and consequently to quash the Notification issued under Section 4(1) of the Land Acquisition Act (for short "the Act") in Ref. No.L1/10201/95, dated 11-12-1995.

The petitioner claims to be tenant of the land in question and some other land (totaling Ac.6-68 cents) belonging to the fourth respondent-Dharmasatram. He states that having taken the land on lease in the year 1970, he has developed the land and made it cultivable by spending huge amounts. While so, a Notification was issued under Section 4(1) of the Act, on 11-12-1995, notifying the land in question for the purpose of house sites. The petitioner states that the Notification is erroneous, inasmuch as it has been issued seeking to acquire the land in question belonging to the fourth respondent, which is under his cultivation, without giving any notice to him, being the tenant of the land in question. It is stated that there was no urgency for respondent No.1 to dispense with the enquiry under Section 5-A of the Act, and in any case, he states that in the case of lands under cultivation, enquiry under Section 5-A of the Act, cannot be dispensed with. Though suitable lands are available, respondents 1 to 3 at the behest of political leaders, sought to acquire the land under cultivation of the petitioner. Inasmuch as no opportunity whatsoever was provided to the petitioner to raise his objection, the petitioner states that the Notification is liable to be quashed on the ground of violation of principles of natural justice.

Denying the allegations made by the petitioner, respondents 1 to 3 filed a counter-affidavit stating that land acquisition proceedings have been initiated for acquisition of an extent of Ac.6-68 cents of land in survey Nos.315/2 of Uppalapadu village,

survey No.1 of Borrapalem village and survey Nos.553/1 and 535/2 of Mallapalli village belonging to the fourth respondent-Charitable Choultry, for the purpose of allotting house sites to the Scheduled Castes and Backward Classes, by issuing Draft Notification under Section 4(1) of the Act and Draft Declaration under Section 6 of the Act, and also dispensing with enquiry under Section 5-A of the Act in view of urgency. They state that the said land is suitable for construction of houses. It is stated that the land in question is not the only source of income to the petitioner, as he has other lands and a video theatre worth Rs.8 lakhs. The petitioner being tenant has no right to stop the land acquisition proceedings. Thus, respondents 1 to 3 pray to dismiss the writ petition.

Heard the learned counsel for the petitioner, and the learned Government Pleader for Land Acquisition for respondent Nos. 1 to 3.

The learned Government Pleader submitted that the land in an extent of Ac. 6-68 cents covered by Survey No.315/2 of Uppalapadu village, Survey No.1 of Borrapalem village and Survey Nos.553/1 and 535/2 of Mallapalli village belongs to Endowment Department and is registered as "Panuganti Lakshmi Venkayamma Charitable Choultry, Katravulapalli" in the village accounts. He submitted that Notification under Section 4(1) of the Act for acquisition of the land in question for providing house sites to Scheduled Castes and Backward Classes, was approved on 11-12-1995, it was published in the official gazette on

12-12-1995, and it was published in Indian Express on 29-12-1995, in Eenadu on 16-12-1995 and in the locality on 18-12-1995. Thereafter, the Declaration under Section 6 of the Act was approved by respondent No.1 on 16-12-1995 and it was published in the official gazette on 18-12-1995 and in the newspapers on 22-12-1995 and 23-12-1995. It is submitted by them that inasmuch as due process has been followed, no exception can be taken to the acquisition of land under cultivation of the petitioner, which belongs to respondent No.4. They denied that enquiry under Section 5-A of the cannot be dispensed with, and submitted that urgency being subject to the subjective satisfaction of the Government, cannot be put to scrutiny before the Courts, and in support of this contention, they placed strong reliance on the judgement of the apex Court in **First Land Acquisition Collector v. Nirodhi Prakash Gangoli**. The petitioner is merely tenant of respondent No.4, and at the most, he being person interested in the land, can claim compensation that may be awarded to respondent No.4, but he cannot challenge the acquisition proceedings,

and in support of this contention, they placed reliance on the judgement of a learned single Judge of Court in **B. Jagannayakulu v. District Collector**. Placing reliance on judgement of the apex Court in **State of A.P. and Others v. Nallamilli Rami Reddy and Others**, it was submitted by them that tenancy laws have no application in relation to lands belonging to Charitable or an Endowment Institution, and the petitioner being a tenant, cannot be permitted to stall the acquisition proceedings, which have been initiated for a genuine public purpose, namely for providing house sites to Scheduled Castes and Backward Classes.

The contention of the petitioner that the Notification under Section 4(1) of the Act is erroneous is not correct. It is the specific case of the respondents that they have followed the due process of law for acquisition of the land belonging to respondent No.4, which is under cultivation of the petitioner. It is stated by them that the Notification under Section 4(1) of the Act, for acquisition of the land, for providing house sites to weaker sections, was approved on 11-12-1995, it was published in the official gazette on 12-12-1995, and it was published in Indian Express on 29-12-1995, in Eenadu on 16-12-1995 and in the locality on 18-12-1995. This apart, it may be noticed that respondent No.1 had also taken consequential steps, for acquisition of the land, by publishing the Declaration under Section 6 of the Act, in the official gazette, locality and newspapers. When respondent No.1 had followed the due process of law and published the Notifications, issued under Sections 4(1) and 6 of the Act in the official gazette, locality and newspapers, the contention of the petitioner that the Notification issued under Section 4(1) of the Act is erroneous, cannot be believed.

Insofar as the contention of the petitioner that respondent No.1 could not have dispensed with the enquiry under Section 5-A of the Act, for there was no urgency, is concerned, it may be noticed that urgency of an acquisition is subject to the subjective satisfaction of the acquisition authority, and should be left to their discretion and decision, and it would not be proper on the part of the Court to go into the veracity or otherwise of the subjective satisfaction arrived at by the authority for invoking the emergency powers to dispense with the enquiry under Section 5-A of the Act, unless it is demonstrated that the decision to dispense with the enquiry had been taken without application of mind to the relevant factors. The apex Court in **First Land Acquisition Collector v. Nirodhi Prakash Gangoli**, while considering the question as to whether the Government was justified in invoking their powers

under Section 17(1) and (4) of the Act to dispense with the enquiry under Section 5-A of the Act, held thus:

The question of urgency of an acquisition under Section 17(1) and (4) of the Act is a matter of subjective satisfaction of the Government and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. In this view of the matter, when the Government takes a decision, taking all relevant considerations into account and is satisfied that there exists emergency for invoking powers under Section 17(1) and (4) of the Act, and issues Notification accordingly, the same should not be interfered with by the Court unless the Court comes to the conclusion that the appropriate authority had not applied its mind to the relevant facts or that the decision has been taken by the appropriate authority mala fide. Whether in a given situation there existed urgency or not is left to the discretion and the decision of the concerned authority. If an order invoking power under Section 17(4) is assailed, the Courts may enquire whether the appropriate authority had all the relevant materials before it or whether the order has been passed by non-application of mind.

The petitioner except making bald assertions that there is no urgency to dispense with the enquiry under Section 5-A of the Act and that in spite of availability of other government land, respondent No.1 at the instance of local political leaders, is seeking to acquire the land belonging to respondent No.4, which is under his cultivation, has not placed any materials to prove that there was no urgency for dispensing with the enquiry under Section 5-A of the Act or there was other government land available in the village, which was suitable for providing house sites to Scheduled Castes and Backward Classes, and that in spite of availability of government land, which is suitable for providing house sites to Scheduled Castes and Backward Classes, respondent No.1 at the instance of local political leaders, was bent upon acquiring the land belonging to respondent No.4, which is under his cultivation. On the other hand, it is the specific case of respondent Nos.1 to 3 that there is no political interference, and that the land is being acquired to implement the policy of the Government, namely to provide house sites to Scheduled Castes and Backward Classes. In the absence of any material produced by the petitioner to show that respondent No.1 is seeking to acquire the land under cultivation of the petitioner at the instance of local political leaders, and has dispensed with the enquiry under Section 5-A of the Act, in spite of there being no urgency, no exception can be taken to the action of respondent No.1 in dispensing with the enquiry under Section 5-A of the Act for acquisition of the land in question, and more so when it is neither pleaded nor demonstrated by the petitioner that the decision to dispense with the enquiry under Section 5-A of the Act had been taken by respondent No.1 without applying his mind to the facts of the case.

The petitioner is, admittedly, tenant of respondent No.4, and he cannot claim to have better rights than what respondent No.4 has, and at best, he being in possession of the land belonging to respondent No.4 as tenant, and person interested in the land, can claim his share of compensation, which may be awarded by the Land Acquisition Officer for acquisition thereof. This aspect of the matter was considered by a learned single Judge of this Court in **B. Jagannayakulu v. District Collector**, wherein he held thus:

A tenant cannot have more rights than the owner. When the question of acquisition of land comes, if the owner cannot defeat the provisions of Land Acquisition Act can a tenant defeat such provisions? Under Section 11 of the Tenancy Act change of ownership in lands which are under tenants is possible. So, by issuing a notification under Section 4 of the Land Acquisition Act, the State has expressed its intention to take the lands into their own ownership. Under the Land Acquisition Act, State can become the owner of any property provided the property is taken for a public purpose and after following the procedure laid down by the Land Acquisition Act. Change of ownership is not barred under the A.P. Tenancy Act, therefore, State can become owner of the land which are owned by landlords whether they are temples or private individuals. Once the land is taken in the ownership of the State, the A.P. Tenancy Act, 1956 becomes inoperative by virtue of Section 18 of the same Act. Section 18 of the Tenancy Act lays down that, nothing in the Tenancy Act shall apply to the lands owned by the State Government or the Central Government. Acquisition, per se, is not barred under the Tenancy Act. Change of ownership, is also not barred under the Tenancy Act. There cannot be any bar to the State Government to take the lands into its possession under the provisions of Land Acquisition Act which are in the possession of tenants at a particular point of time.

The petitioner being tenant of respondent No. 4 and person interested in the land belonging to respondent No.4 by reason of his cultivation of the said land, can well seek his share of compensation that may be awarded by the Land Acquisition Officer in lieu of acquisition thereof, but he certainly cannot question the acquisition proceedings on mere technicalities.

In the result, the writ petition is devoid of any merit, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J

Date: 10-11-2004

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To

1. The District Collector, East Godavari District, Kakinada.
2. The Revenue Divisional Officer, Peddapuram, East Godavari District.
3. The Mandal Revenue Officer, Gandepalli Mandal, East Godavari District.
4. The Executive Officer, Sri Panuganti Laxmi Venkayamma Vari
Dharmasatram, Katravulapalli, Jaggampet Mandal, East Godavari District.
5. Two C.Cs. to the Government Pleader for Land Acquisition, High Court Buildings, A.P., Hyderabad (OUT).
6. Two C.D. copies.

